

Inspector General

United States
Department of Defense



Marine Corps Systems Command's Use of Undefinitized Contractual Actions

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE 27 OCT 2010		2. REPORT TYPE		3. DATES COVERED 00-00-2010 to 00-00-2010	
4. TITLE AND SUBTITLE Marine Corps Systems Command's Use of Undefined Contractual Actions				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Department of Defense Office of Inspector General, 400 Army Navy Drive, Arlington, VA, 22202-4704				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT Same as Report (SAR)	18. NUMBER OF PAGES 60	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

Additional Copies

To obtain additional copies of this report, visit the Web site of the Department of Defense Inspector General at <http://www.dodig.mil/audit/reports> or contact the Secondary Reports Distribution Unit at (703) 604-8937 (DSN 664-8937) or fax (703) 604-8932.

Suggestions for Audits

To suggest or request audits, contact the Office of the Deputy Inspector General for Auditing by phone (703) 604-9142 (DSN 664-9142), by fax (703) 604-8932, or by mail:

ODIG-AUD (ATTN: Audit Suggestions)
Department of Defense Inspector General
400 Army Navy Drive (Room 801)
Arlington, VA 22202-4704



Acronyms and Abbreviations

BCM	Business Clearance Memorandum
DCAA	Defense Contract Audit Agency
DFARS	Defense Federal Acquisition Regulation Supplement
DPAP	Defense Procurement and Acquisition Policy
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
GAO	Government Accountability Office
IG	Inspector General
MCSC	Marine Corps Systems Command
UCA	Un definitized Contractual Action
U.S.C.	United States Code



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

October 27, 2010

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
UNDER SECRETARY OF DEFENSE (COMPTROLLER)/
CHIEF FINANCIAL OFFICER
NAVAL INSPECTOR GENERAL
COMMANDER, MARINE CORPS SYSTEMS COMMAND

SUBJECT: Marine Corps Systems Command's Use of Undefined Contractual
Actions (Report No. D-2011-001)

We are providing this report for your information and use. We considered management comments on a draft of this report when preparing the final report. This report is the second in a series of reports and is part of a congressionally mandated periodic review of DOD use of undefined contractual actions. Marine Corps Systems Command contracting personnel did not consistently comply with statutory and DOD requirements for managing undefined contractual actions, resulting in the Marine Corps assuming additional risk in the award and negotiation process and possibly paying more profit than necessary.

The Marine Corps Systems Command comments conformed to the requirements of DOD Directive 7650.3 and were responsive. Therefore, additional comments are not required.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9201 (DSN 664-9201).

A handwritten signature in black ink, reading "Richard B. Jolliffe", is positioned above the printed name.

Richard B. Jolliffe
Assistant Inspector General
Acquisition and Contract Management



Results in Brief: Marine Corps Systems Command's Use of Undefinitized Contractual Actions

What We Did

Public Law 99-591, section 908(b) requires the DOD Inspector General to periodically audit undefinitized contractual actions (UCAs) and submit a report to Congress. This is the second in a series of reports discussing DOD compliance with section 2326, title 10, United States Code.

We reviewed 88 UCAs with a total not-to-exceed value of about \$2.75 billion awarded by the Marine Corps Systems Command (MCSC) from FY 2004 through 2009 to determine whether MCSC contracting officials complied with section 2326, title 10, United States Code and whether they appropriately justified and definitized UCAs at reasonable prices.

What We Found

MCSC contracting officials did not consistently comply with statutory requirements for managing 80 of the 88 UCAs. Contracting officials did not prepare adequate requests for authorization to issue 34 UCAs, justify the issuance of 34 UCAs, definitize 57 UCAs within timeframes, support whether the contractor's reduced risk during the undefinitized period was reflected in profit for 45 UCAs, obligate funds within limits for 54 UCAs, or document that the Government received a fair and reasonable price on 15 UCAs.

MCSC contracting officials did not consistently comply with UCA restrictions because they did not follow statutory and DOD regulations for requesting to issue a UCA; they issued UCAs unnecessarily because of poor acquisition planning, and customers changed requirements after the UCA issuance; the contractor submitted inadequate proposals; they did not

adequately document the profit determination; they were unaware of funding limits; and they did not adequately document that the Marine Corps received a fair and reasonable price.

As a result, the Marine Corps assumed increased cost risk in the award and negotiation process and may have paid excess profit.

What We Recommend

Marine Corps officials should develop a guide to assist with UCA justification, obligation, and definitization compliance; develop procedures to ensure that all UCAs are approved by the head of the agency or delegate; develop procedures to ensure that UCA requests include the impact on agency requirements if contracting officials do not issue a UCA; develop track methods for definitization of UCAs; better coordinate with customers to identify changes in Government requirements; and require contracting officials to adequately document the profit determination for UCAs.

Management Comments and Our Response

The Chief of Staff commented for the Commander, Marine Corps Systems Command. The Chief of Staff agreed with all recommendations and stated that MCSC has already developed a draft Quick Reference Guide and automated tracking tool to be used by MCSC contracting personnel. Additionally, contracting personnel are being instructed to better coordinate with program managers and contractors. The Chief of Staff stated that the actions will be fully implemented by November 30, 2010. No further comments are required. Please see the recommendations table on the back of this page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Commander, Marine Corps Systems Command		1-7

Table of Contents

Introduction	1
Objectives	1
Legislation and Congressional Report Requirement	1
Background	1
United States Marine Corps Systems Command	3
Review of Internal Controls	4
Finding. Inconsistent MCSC Management of Undefined Contractual Actions	5
UCA Deficiencies	6
Inadequate Authorization Requests	6
Inadequate Justification for Issuing UCAs	7
MCSC Compliance With Definitization Requirements	9
MCSC Compliance With Requirements to Reflect the Undefined Period on Allowable Profit	13
MCSC Compliance With Obligation Limitations for UCAs	17
Documentation of a Fair and Reasonable Price	19
Proactive Measure Taken	20
Conclusion	20
Recommendations, Management Comments, and Our Response	21
Appendices	
A. Scope and Methodology	24
Prior Coverage	26
B. August 29, 2008, Office of Defense Procurement and Acquisition Policy Memorandum	28
C. Undefined Contractual Actions Reviewed	30
D. Deficiencies Identified	35
E. Definitization Elapsed Days for MCSC UCAs	40
F. Reasons for Delayed Definitization of MCSC UCAs	45
Management Comments	
Marine Corps Systems Command	48

Introduction

Objectives

We determined the Marine Corps Systems Command's (MCSC) compliance with restrictions on undefinitized contractual actions (UCAs) imposed by section 2326, title 10, United States Code (10 U.S.C. § 2326 [2009]), "Undefinitized contractual actions: restrictions." We also determined whether MCSC UCAs were appropriately justified and definitized at reasonable prices. This is the second in a series of reports discussing DOD compliance with 10 U.S.C. § 2326 (2009). See Appendix A for the scope and methodology and prior coverage related to the objectives.

Legislation and Congressional Report Requirement

The DOD Inspector General (IG) is required by Public Law 99-591, "Continuing Appropriations for Fiscal Year 1987," section 908(b) to periodically conduct audits of UCAs. DOD IG Report No. D-2004-112, "Undefinitized Contractual Actions," August 30, 2004, was our last audit of UCAs. Section 908(b) of Public Law 99-591 states:

Oversight by Inspector General — The Inspector General of the Department of Defense shall —

- (1) periodically conduct an audit of contractual actions under the jurisdiction of the Secretary of Defense (with respect to the Defense Logistics Agency) and the Secretaries of the military departments; and
- (2) after each audit, submit to Congress a report on the management of undefinitized contractual actions by each Secretary, including the amount of contractual actions under the jurisdiction of each Secretary that is represented by undefinitized contractual actions.

Background

UCAs are agreements that allow a contractor to begin work and incur costs before the Government and the contractor have reached a final agreement on contract terms, specifications, or price. Contracting officials should use UCAs only when the negotiation of a definitive contractual action is not possible in sufficient time to meet the Government's requirement. The Government's requirement shall also demand that the contractor be given a binding commitment so that contract performance can begin immediately.

UCA Restrictions

Section 2326, title 10, United States Code, requires that the request for approval to use a UCA be sent to the head of an agency contain the anticipated impact on agency requirements if a UCA is not used and establishes limitations on the obligation of funds, the definitization of terms, and allowable profit for UCAs. The Government limits the use of UCAs because these contracts place the Government at a distinct disadvantage in negotiating final prices.

UCAs for foreign military sales, purchases that do not exceed the simplified acquisition threshold, special access programs, and congressionally mandated long-lead procurement contracts are not subject to compliance with 10 U.S.C. § 2326. The Defense Federal Acquisition Regulation Supplement (DFARS) 217.7402, “Exceptions,” requires that contracting officials apply DFARS 217.74, “Unfinitized Contract Actions,” on congressionally mandated long-lead procurement contracts to the maximum extent practicable. Both 10 U.S.C. § 2326 and the DFARS provide additional restrictions for the approval, definitization, obligation of funds, and determination of allowable contractor profit.

Specifically, to determine whether UCAs issued by MCSC contracting officials were in compliance, we reviewed the following four areas.

- Authorization to use a UCA: We evaluated whether contracting officials issued UCAs only after obtaining proper authorization. Additionally, we reviewed the requests to issue a UCA to verify that the requests adequately addressed potential adverse impacts on agency requirements if a UCA was not issued.
- Contract definitization: We evaluated whether MCSC contracting officials definitized UCAs within the 180-day time limit.
- Allowable profit: We evaluated whether MCSC contracting officials’ determination of contractor profit reflected the work performed during the unfinitized period.
- Compliance with obligation limitations: We evaluated whether MCSC contracting officials obligated funds within allowable amounts.

In addition, we also reviewed UCAs to determine whether MCSC contracting officials appropriately justified the UCAs and whether the UCAs were definitized at fair and reasonable prices.

Enhanced Reporting Requirements

On August 29, 2008, the Office of Defense Procurement and Acquisition Policy (DPAP) issued a memorandum that required semiannual reporting of DOD UCA usage to DPAP (see Appendix B). DPAP introduced the enhanced reporting requirement in response to the Government Accountability Office (GAO) Report No. GAO-07-559, “Defense Contracting: Use of Unfinitized Contract Actions Understated and Definitization Time Frames Often Not Met,” June 2007, and Public Law-110-181, “The National Defense Authorization Act for Fiscal Year 2008,” section 809, “Implementation and Enforcement of Requirements Applicable to Unfinitized Contractual Actions.”

DFARS Case Rulings

The 2007 GAO audit report resulted in DFARS Case 2007-D011,¹ which clarified that, as stated in 10 U.S.C. § 2326, DFARS 217.74 provides the criteria (instead of those in Federal Acquisition Regulation [FAR] 16.603-2, “Application”) for planning the definitization schedule for a letter contract,² and implements section 809 of the FY 2008 National Defense Authorization Act. During July 2009, DFARS Case 2008-D034 expanded the definition of “contract action” in DFARS 217.74 to include change orders and other unpriced modifications. Previously, change orders and other unpriced modifications followed guidance to the maximum extent practicable. In recognition of the need for full accountability of unpriced change orders, DFARS 217.74 will address management, oversight, and limitations on the use of unpriced change orders, which is similar to the policy that applies to other undefinitized contractual actions.

United States Marine Corps Systems Command

MCSC is responsible for acquiring and sustaining systems and equipment used to accomplish the Marine Corps warfighting mission. According to the command overview, MCSC provides quality systems and equipment to the operating forces, and manages the systems and equipment during their entire lifecycle using an innovative business process. MCSC mission is to serve as the Commandant’s agent for acquisition and sustainment of systems and equipment used to accomplish the Marine Corps’ warfighting mission.

Marine Corps Systems Command UCA Usage (FY 2004–FY 2009)

We selected a nonstatistical judgment sample³ of 18 contracts that included 88 UCAs issued by MCSC contracting personnel from FY 2004 through 2009 with a total value of about \$2.75 billion (see Table 1). We initially reviewed Federal Procurement Data System-Next Generation (FPDS-NG) data and supplemented the data with MCSC contracting reports to determine the sample of MCSC UCAs we reviewed. See Appendix C for a list of UCAs reviewed.

¹ DFARS Case 2007-D011 was open as of July 9, 2010. DFARS Case D2008-D034 was finalized on August 10, 2010, but is not addressed as part of our review.

² A letter contract is a written preliminary contractual instrument that allows a contractor to start work prior to the finalization of the contract terms.

³ Nonstatistical judgment samples do not generalize to universe; therefore, audit results should not be projected across all MCSC UCAs.

**Table 1. Nonstatistical Judgment Sample of MCSC UCAs for
FY 2004–2009**

UCA Source	Number of Contracts	Number of UCAs	Not-to-Exceed Dollar Value
Letter Contracts	6	6	\$ 90,536,441.44
Indefinite-Delivery, Indefinite-Quantity Contracts	12	82	2,659,672,254.09
Totals	18	88	\$2,750,208,695.53

Review of Internal Controls

DOD Instruction 5010.40, “Managers’ Internal Control Program (MICP) Procedures,” July 29, 2010, requires DOD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses in MCSC’s management of UCAs. MCSC contracting officials did not consistently manage UCAs. Specifically, MCSC contracting officials issued UCAs based on inadequate requests, did not adequately justify UCAs, and did not definitize UCAs within allowable timeframes. In addition, contracting officials inadequately documented how costs incurred during the undefinitized period impacted the contractor’s profit. Moreover, delays in definitizing contracts may have weakened MCSC contracting officials’ position in price negotiations and increased the cost to the Government. Additionally, MCSC’s contracting officials did not adequately document allowable profit, which may have resulted in excess profit. Implementing Recommendations 1–7 in the Finding will improve MCSC’s management of UCAs. We will provide a copy of the report to the senior official responsible for internal controls at Marine Corps System Command.

Finding. Inconsistent MCSC Management of Undefinitized Contractual Actions

MCSC contracting officials did not consistently comply with statutory requirements for managing UCAs for 80 of the 88 UCAs we reviewed. For the 80 UCAs, valued at about \$2.72 billion, contracting officials did not:

- prepare adequate requests for authorization to issue 34 UCAs,
- properly justify 34 UCAs,
- definitize 57 UCAs within the required 180-day timeframe,
- support whether the contractor's reduced risk during the undefinitized period was reflected in negotiated profit on 45 UCAs,
- obligate funds within allowable limits on 54 UCAs, and
- document whether the definitized prices the Government received were fair and reasonable on 15 UCAs.

MCSC contracting officials issued UCAs with inadequate authorization requests because they did not follow statutory and DOD regulations to have the award approved by the Chief of the Contracting Office or include a statement of the anticipated effect on requirements if the UCA was delayed. Further, MCSC contracting officials did not adequately justify issuing a UCA for requirements that the customer did not identify in a timely manner or for known acquisition requirements because of poor acquisition planning. MCSC contracting officials did not always definitize UCAs within allowable timeframes because:

- customers changed requirements after MCSC contract officials issued the UCA,
- contractors did not submit timely and adequate proposals,
- a claimed lack of personnel to administer the UCAs, and
- unanticipated delays in Defense Contract Audit Agency audits of the proposals.

MCSC contracting officials issued UCAs that did not adequately support whether the contractor's reduced risk during the undefinitized period was reflected in negotiated profit because contracting personnel used weighted guidelines and negotiation processes that did not provide adequate support for profit determination. MCSC contracting officials issued UCAs that were noncompliant with funding limitations because they were not aware of the requirements. Additionally, MCSC contracting officials did not document that the Marine Corps received a fair and reasonable price on awards primarily because the UCAs were entirely completed before definization.

As a result, the MCSC contracting officials' positions in the price negotiation and contract award may have been weakened, and delays in definitizing contracts may have increased the cost risk to the Government. Additionally, because MCSC contracting officials did not adequately document profit, the Government may have paid excess profit to the contractors.

UCA Deficiencies

Our review of 88 UCAs issued by MCSC contracting officials identified a total of 239 deficiencies. UCA deficiencies consisted of six different types: inadequate authorization requests to issue a UCA, inadequate justification to issue a UCA, untimely definitization, insufficient documentation supporting the negotiated allowable profit rate for the undefinitized period, obligation of funds in excess of allowable amounts, and insufficient documentation supporting whether the Government received a fair and reasonable price. MCSC should develop a guide that can be used by contracting personnel regarding the compliance requirements for issuing UCAs, obligating funds, and timely definitization of UCAs. See Appendix D for additional details of the deficiencies. Table 2 identifies the reasons we considered the UCAs deficient and the number of instances.

Table 2. Reasons UCAs Issued Were Deficient and Number of Instances

Deficiency Reason	Number of Instances*
Inadequate authorization request	34
Inadequate justification to issue a UCA	34
Untimely contract definitization	57
Insufficient documentation of negotiated profit rate for the undefinitized period	45
Obligation of funds in excess of allowable amounts	54
Insufficient documentation that the Government received a fair and reasonable price	15
Total	239

*A UCA may have more than one deficiency.

Inadequate Authorization Requests

MCSC contracting officials did not obtain proper authorization before issuing 34 of the 88 UCAs reviewed and, therefore, transferred additional cost and performance risk from the contractor to the Government. MCSC contracting officials obtained approval from the head of the contracting activity to issue 54 UCAs.

DFARS 217.7404-1, “Authorization,” requires that the contracting official obtain approval from the head of the contracting activity before entering into a UCA. The contracting official’s request for UCA approval must include a full explanation of the need to begin contract performance before contract definitization. The head of the agency can delegate the approval to issue a UCA depending on the dollar value of the action. For the Marine Corps, the Chief of the Contracting Office is the approval authority. For MCSC, the Executive Director or delegate is the approval authority.

MCSC contracting officials issued 34 UCAs, valued at about \$279 million, on 3 contracts that did not contain, as required by DFARS 217.7401-1, approval from the head of the contracting agency before issuing the UCA. MCSC contracting officials did not receive approval from the MCSC Executive Director when they issued UCAs on contracts M67854-06-D-7003, M67854-06-D-7004, and M67854-7-D-5030. Specifically,

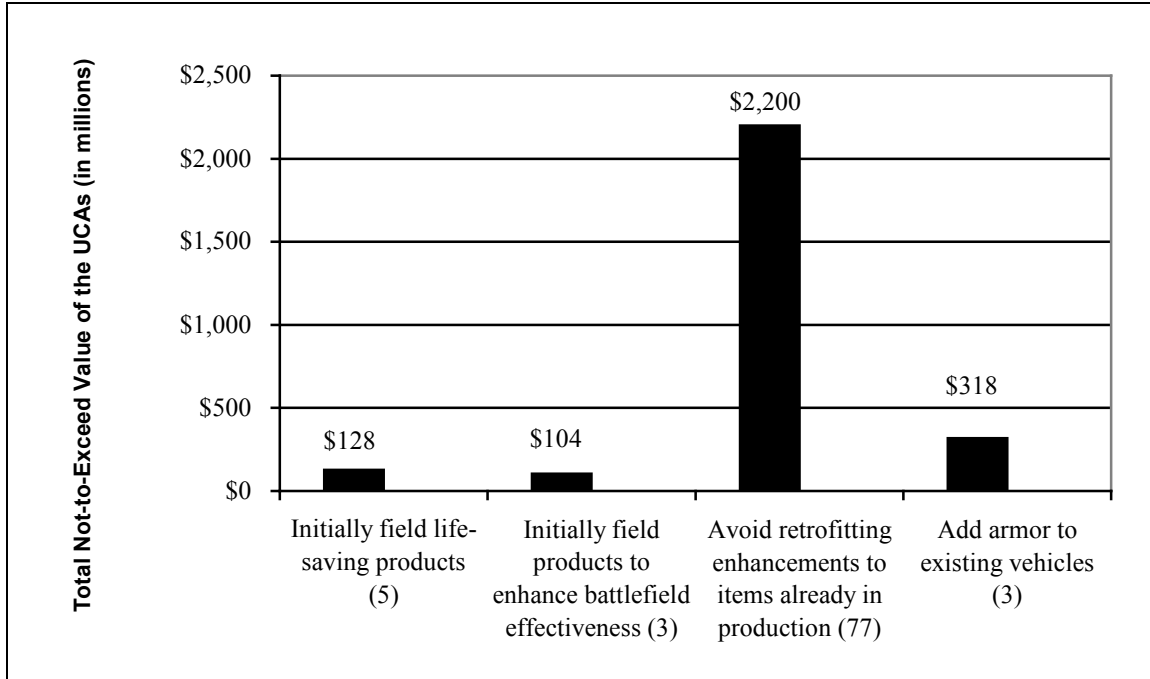
- MCSC contracting officials did not prepare a proper UCA Approval Request Memorandum or similar document for 22 UCAs on contract M67584-06-D-7003 and 11 UCAs on contract M67854-06-D-7004 for the procurement of a radio-controlled improvised explosive device, ground electronic countermeasures equipment. MCSC contracting officials prepared an authorization request under FAR 6.303-1(b), which was approved by the Assistant Secretary of the Navy for Research, Development, and Acquisition, to provide approvals for using other than full and open competition to procure the supplies and services instead of preparing an approval to issue a UCA.
- MCSC contracting officials did not receive the approval from the MCSC Executive Director to issue the UCA exercised in contract M67854-07-D-5030, delivery order 3, modification 18. MCSC contracting officials did not obtain the signature of the MCSC Executive Director on the UCA Approval Request Memorandum.

As a result, MCSC contracting officials did not properly authorize the UCA and exposed the Government to increased risk on the 34 UCAs with a combined not-to-exceed value of about \$279 million. MCSC officials should develop procedures in the contract review process to help ensure that each UCA request sent to the head of the agency or delegate includes a properly signed and approved request to issue a UCA as required by 10 U.S.C. § 2326 and the DFARS.

Inadequate Justification for Issuing UCAs

MCSC contracting officials placed the Government at unnecessary risk when they issued 1 UCA for known acquisition requirements and 33 other UCAs because they did not justify issuing the delivery orders as UCAs. DFARS 217.7403 limits the use of a UCA to situations when negotiating a definitive contract is not possible and the Government's interest demands that contract performance begin immediately. In addition, MCSC contracting officials' questionable use of UCAs transferred additional cost and performance risk from the contractor to the Government. However, MCSC contracting officials identified compelling reasons for issuing UCAs. We determined that MCSC contracting officials generally issued UCAs to enhance the DOD mission or save time and funds associated with retrofitting products that were already under contract. The figure illustrates the reasons cited for issuing the UCAs that we reviewed.

Figure. Reasons MCSC Issued UCAs and Amount Spent



UCA Issued for Known Acquisition Requirements

MCSC issued a UCA although the requirement was known and sources were sought approximately 8 months earlier. MCSC contracting officials issued contract M67854-07-D-1011 with a not-to-exceed value of \$74 million on August 3, 2007, as a UCA even though MCSC contracting officials issued an initial solicitation for sources on December 6, 2006. MCSC contracting officials had almost 8 months to negotiate the award through traditional means. MCSC officials made the decision to pursue a sole-source award on December 29, 2006. The MCSC contracting official made the decision to issue the UCA only after the contractor informed him that production would take longer than expected. Rather than further delay procurement of the supplies, the contracting official decided to issue a UCA. Although we understand the reason the contracting official was compelled to issue a UCA, this is an example in which better communication between the program office and the contracting official could have eliminated the need for a UCA action. MCSC contracting officials should avoid issuing UCAs for known requirements because it is indicative of poor acquisition planning and a lack of communication.

UCAs Issued With Inadequate Justification

We determined that 33 UCAs awarded under two contracts (M67854-06-D-7003 and M67854-06-D-7004) were not adequately justified. MCSC contracting officials prepared a single document when each contract was issued to justify all UCAs awarded on the contract for both of the contracts we reviewed. The contracting official documented the requirement to expedite the enhancements for battlefield effectiveness and life-saving measures in the overall contract justification to award under

FAR 6.303-1(b); however, the contracting official should have prepared individual documents for each UCA discussing how the Government would be adversely affected without issuing the UCA in accordance with DFARS 217.74 requirements. Although the contracting official stated that he realized the need for better documentation, he was more interested in fielding the product. The contracting official cited a lack of contracting personnel as the reason for issuing a single document to cover the entire contract. MCSC contracting officials should develop a UCA Approval Request Memorandum for each award, including delivery orders, that detail why each UCA should be awarded and how the Government will be adversely impacted if a UCA award is not authorized.

MCSC Compliance With Definitization Requirements

MCSC contracting officials did not definitize 57 UCAs within the 180-day timeframe specified by 10 U.S.C § 2326. On average, MCSC contracting officials definitized these 57 UCAs about 381 days after award. MCSC contracting officials definitized 2 UCAs after the 180-day timeframe because the Government changed its requirements after MCSC contracting officials issued the UCAs, and 10 UCAs after the 180-day timeframe because the contractor did not submit an adequate qualifying proposal. In addition, MCSC contracting officials claimed that they did not definitize 26 UCAs because of a lack of personnel, 3 UCAs because the Defense Contract Audit Agency (DCAA) or Defense Contract Management Agency personnel had not yet approved the contractor proposal, and 16 UCAs for no specified reason. Section 2326(b), title 10, United States Code, states:

A contracting officer of the Department of Defense may not enter into an undefinitized contractual action unless the contractual action provides for agreement upon contractual terms, specifications, and price by the earlier of—

(A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or

(B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.

Section 2326(g)(2) defines a “qualifying proposal” as:

. . . a proposal that contains sufficient information to enable the Department of Defense to conduct complete and meaningful audits of the information contained in the proposal and of any other information that the Department is entitled to review in connection with the contract, as determined by the contracting officer.

Of the 88 UCAs reviewed, MCSC contracting officials exceeded the timeframe limits for 57 UCAs, including 4 UCAs that were undefinitized but have reached the 180-day timeframe limit as of September 2010. See Appendix E for elapsed days from contract award to UCA definitization and Appendix F for reasons for the delays. On

average, MCSC contracting officials took approximately 381 days to definitize the non-compliant UCAs from the date of award. The 381 days excludes one UCA issued on contract M67854-07-D-5025, one UCA issued on contract M67854-07-D-5030 and two UCAs issued on contract M67854-07-D-5032 that have not been definitized but have exceeded 180-days. MCSC contracting officials did not correctly definitize 7 out of 11 UCAs on one contract, and 19 out of 22 UCAs on another contract. MCSC contracting officials allowed one UCA to remain undefinitized for more than 1,000 days after the award date.

During the periods that UCAs remain undefinitized, contract costs and performance risk transfer from the contractor to the Government. MCSC contracting officials can fund contracts at an amount consistent with the incurred costs throughout the undefinitized period as an incentive to the contractor for assisting in timely definitization. Contractors should be more willing to report incurred costs and submit timely proposals if doing so increases the amount the Government obligates on the undefined contracts. MCSC contracting officials should fund UCAs so that both users and contractors have incentive to coordinate early and often about proposals, contractual needs, and funding. Additionally, MCSC contracting officials should develop procedures to track definitization timelines and milestones of UCAs, as well as maintaining documentation and gaining approval from the Executive Director when compliant definitization will not occur. The contractor, auditors, and other stakeholders should be notified when milestones are approaching. Table 3 shows the reasons contracting officials did not definitize the 57 UCAs within the required timeframe and the average number of days it took to definitize the UCAs.

Table 3. Average Delays in Definitization

Reason Definitization Was Late	Number of UCAs	Average Days From Issuance to Definitization*
Change in Government Requirements	2	246
Inadequate Proposals	10	382
Lack of Personnel	26	424
Audit Delays	3	543
No Specified Issue	16	269
Total	57	381

* Receipt of a qualifying proposal extends the time period allowed for UCA definitization. In some cases, the qualifying proposal is received before the UCA issuance, and the UCA should be definitized within 180 days of issuance. Four UCAs were not fully definitized and were removed from the averages. We considered the definitization late if there was 181 days or more between UCA issuance, receipt of qualifying proposal, and the UCA definitization.

Change in Government Requirements

MCSC contracting officials did not definitize two UCAs within the required 180-day timeframe because MCSC program officials changed requirements after MCSC contracting officials issued the UCAs. After issuing a UCA, contracting officials have little control over changing customer requirements. Each significant change in requirements requires the contractor to prepare or revise a proposal that contracting officials must then review. During the undefinitized period, the Government assumes greater contract risk. MCSC contracting officials should better coordinate with customers and management to identify changes in Government requirements as soon as practicable and document changes in the acquisition narrative. For example, MCSC contracting officials were unable to definitize the following UCA within the required 180-day timeframe due to a change in Government requirements.

Contract M67854-07-D-5028 Delivery Order 4 Modification 01

MCSC contracting officials did not definitize the UCA issued in contract M67854-07-D-5028, delivery order 4, modification 08, with a not-to-exceed value of about \$49.5 million, within the required 180-day timeframe. MCSC contracting officials issued contract modification P0001 on August 21, 2008, to make engineering changes to the Mine Resistant Ambush Protected vehicles being procured on the original contract. In order to meet the required date for definitization, the contract line item numbers established in delivery order 4, modification 08, would need to have been definitized as of February 18, 2009.

After MCSC contracting officials issued the UCA, MCSC program office personnel in Quantico, Virginia, obtained three separate proposals, which would have extended the 180-day timeframe if contracting officials had determined that any of the proposals were qualified. The contracting official stated that the definitization of the modification was not in compliance because specifications on the Mine Resistant Ambush Protected vehicle were changing, and multiple proposals were required. MCSC contracting officials were unable to definitize the UCA within the 180-day timeframe because the changes to the requirements required the contractor to submit additional proposals that required the Government to approve them after the UCA was already issued. As a result, MCSC contracting officials did not definitize the contract until April 22, 2009, 243 days after issuing the UCA.

Inadequate or Absence of Qualifying Proposals

Contractors did not submit proposals, or submitted inadequate proposals, in response to 10 Marine Corps UCAs, which also contributed to delays in definitization. The contractor proposals were:

- absent because they were not submitted to MCSC contracting officials,
- inadequate because the contracting officer determined that they did not contain sufficient information to enable DOD personnel to conduct complete and meaningful audits of the information contained in the proposal, or
- not submitted in a timely manner.

For example, MCSC contracting officials were unable to definitize the following UCAs within the required 180 days because the contractor did not submit a qualified proposal in a timely manner. Contractors responding to an urgent Government request often require input from multiple subcontractors. During the periods that UCAs remain undefinitized, contract costs and performance risk transfer from the contractor to the Government. In addition, the Government pays the contractor to prepare the proposals. MCSC contracting officials should consider contractor responsiveness in preparing a qualifying proposal when determining contractor profit.

Contract M67854-07-D-5028

The contractor did not submit qualifying proposals on two modifications on delivery order 0004 for contract M67854-07-D-5028. The contract was a firm-fixed-price award to procure technical data, training, and field experts in support of the Mine Resistant Ambush Protected vehicles.

Delivery Order 0004 Modification 04

MCSC contracting officials did not receive a timely qualifying proposal for a UCA issued to modify the final 100 vehicles ordered under the initial contract. The contractor's inability to prepare and submit a timely proposal resulted in DOD personnel being unable to conduct meaningful audits of the costs associated with the contract and definitize the UCA within the 180-day limit established by 10 U.S.C. 2326 (c).

Delivery Order 0004 Modification 08

MCSC contracting officials did not receive a timely qualifying proposal for a UCA issued to provide field service representatives in theatre to field the Mine Resistant Ambush Protected Vehicles. The contractor's inability to prepare and submit a timely proposal resulted in DOD personnel being unable to conduct meaningful audits of the costs associated with the contract and definitize the UCA within the limits established by 10 U.S.C. 2326 (c).

Insufficient Number of Contracting Personnel

An MCSC contracting official stated that an insufficient number of contracting personnel resulted in 26 UCAs issued on 2 contracts not being definitized within the required 180-day timeframe. The contracting official stated that the number of personnel available were insufficient for addressing the increased workload that UCAs require. After issuing a UCA, contracting personnel are still responsible for the administration and life cycle of the UCA. Each UCA issued provides a new challenge for contracting personnel, and the workload in administering the UCA sometimes results in contracting officials being unable to definitize the UCA in accordance with Federal regulations. However, when definitization extends beyond the normal period, the Government assumes greater contract risk.

Audit Delays

MCSC contracting officials stated that three UCAs were not definitized within the 180-day requirement because audits of the contractor proposals took longer than anticipated. Although Defense Contract Management Agency or DCAA audits of the

proposals for the costs associated with the UCAs are not mandatory, meaningful audits of the information contained in the proposal assist contracting officials in determining whether the costs submitted in the proposals are acceptable. While the proposals are being audited, the UCAs remain undefinitized, and the Government assumes greater contract risk. MCSC contracting officials should better coordinate with the contractor and audit personnel on the proposal requirements, definitization schedule, and completion milestone dates to ensure that adequate time is allotted to definitize the contract within the 180-day requirement.

Contract M67854-07-C-2062

An MCSC contracting official stated that the delayed definitization of contract M67854-07-C-2062 to procure an additional 230 Target Location Designation Handoff Systems was delayed because of disputes between the contractor and DCAA auditors. The contractor submitted a proposal to the MCSC contracting official that was then submitted to a DCAA auditor to review the costs anticipated with the contract. According to the contracting official, the DCAA auditor's results were not returned in a timely manner, and the DCAA auditor requested that the contractor resubmit their proposal after questioning various costs cited in the original proposal. The MCSC contracting official stated that after various DCAA audits of the submitted proposal, a qualifying proposal was received but only after the 180-day limit had expired. According to the contracting officer, the numerous submissions of what the DCAA auditor determined to be inadequate proposals coupled with the DCAA auditor's slow response to reject the proposals resulted in MCSC contracting officials being unable to qualify a proposal and definitize the UCA within the limits established by 10 U.S.C. 2326 (c).

Reason for Delayed Definitization Not Determined

MCSC contracting officials issued 16 UCAs that did not meet the 180-day definitization requirement, but we could not determine why the requirement was not met. MCSC contract files provided no indication why the awards did not meet the requirement. In many cases, we were not able to meet with the specific contracting officials responsible for the UCA because they were no longer employed by MCSC. The contracting officials currently responsible for the contract files were unable to cite specific reasons for these 16 UCAs.

MCSC Compliance With Requirements to Reflect the Undefinitized Period on Allowable Profit

MCSC contracting officials may have paid excess profits because 45 UCAs did not include sufficient support that would allow an independent party to determine the basis for their profit determination. MCSC contracting officials adequately documented weighted guidelines, negotiation sessions, or a combination of both methods that included the consideration of UCA risk to develop a profit objective for 33 of the 78 UCAs. Additionally, MCSC contracting officials generally discussed the results of their weighted guidelines analysis in the business clearance memorandum (BCM), but rarely discussed how the work performed during the undefinitized period affected the

negotiated profit. We were unable to review the 10 remaining UCAs in our sample because the UCAs were not yet fully definitized, or the documents were not available to the MCSC personnel.

MCSC contracting officials' discussions of profit determination were included in the BCM, but were insufficient to adequately document the degree to which costs were incurred before definitization for 45 of the 78 UCAs. During the undefinitized period, the Government bears increased risk, and the contractor generally bears reduced risk. If the contractor's reduced risk is not reflected in the negotiated profit rate, then the Government could be paying too much profit to the contractor.

Requirements to Reflect Reduced Cost Risk in the Contractor's Profit or Fee

Both 10 U.S.C. 2326 and the DFARS provide guidance on profit determination, and the FAR provides guidance on documenting the price agreement. Section 2326(e), title 10, United States Code, states:

The head of an agency shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects:

- (1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and
- (2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

DFARS 215.404-4, "Profit," requires that contracting officials use a structured approach for developing a pre-negotiation profit or fee objective on any negotiated contract action when the contractor provides cost or pricing data, except for cost-plus-award-fee contracts or contracts with federally funded research and development centers. DFARS 215.404-4 further states that the weighted guidelines method is the structured approach that must be used, with certain exceptions. FAR 15.406.3, "Documenting the Negotiation," states that a contracting official must document the principle elements that reflect the negotiated price agreement.

DD Form 1547 Provides Inadequate Support for Profit Determination

MCSC contracting officials did not provide sufficient details to support that the undefinitized period was a consideration in profit determination. DFARS 215.404-71, "Weighted Guidelines Method," states that a contracting official should assess the extent to which costs have incurred prior to definitization. DD Form 1547, "Record of Weighted Guidelines Application," does not include a section specifically for documenting the UCA risk assessment when performing the analysis. MCSC contracting

officials generally discussed the results of their weighted guidelines analysis in the BCM, but rarely discussed how the work performed during the undefinitized period affected the negotiated profit.

The weighted guidelines take into consideration incurred costs, the undefinitized period, and the remaining portion of the contract to develop a profit objective. The weighted guidelines analysis generates a total profit objective for the contract based on the factors entered by the contracting official and the contract type risk factor. The contracting official uses the profit objective as the Government's basis for negotiations with the contractor.

The DD Form 1547 identifies a profit factor but does not state the degree to which costs were incurred prior to definitization, the risk factors assigned to the incurred cost and projected cost, or the resulting impact on the contractor's profit or fee. As a result, it is not possible to determine how effectively the contracting official considered the contractor's possible reduced cost risk unless the contracting official documented the risk assessment in the contract file. MCSC contracting officials should document the costs incurred before definitization and their impact on profit determination in the BCM. GAO recommended in a previous report that DOD revise the DFARS to include instructions on how to perform an assessment of any reduced cost risk on profit or fee during the undefinitized period. The DOD IG recommended better implementation of the DFARS guidance for performing this assessment.⁴

Inadequate Documentation of Profit Determination

MCSC contracting officials did not adequately document the degree to which costs were incurred before definitization for 45 of the 78 UCAs⁵ reviewed. For the remaining 33 UCAs, the contract files included additional information to supplement the weighted guidelines to show that the contracting official at least considered the UCA status when negotiating the profit percentage. However, with many of the 33 UCAs, the negotiated profit percentage did not differentiate between work completed before and after definitization. Without adequate discussion of the contracting official's consideration of the costs incurred, we were unable to determine to what extent the undefinitized period was reflected in the contractor's profit. See Table 4 for the number of instances in which contracting officials properly and improperly documented the costs incurred before definitization.

⁴ GAO Report No. GAO-10-299, "DOD Has Enhanced Insight into Undefinitized Contract Action Use, But Management at Local Commands Needs Improvements," January 2010 and DoD IG Report No. D-2004-112, "Undefinitized Contractual Actions," August 30, 2004.

⁵ From our sample of 88 UCAs, 4 UCAs were not fully definitized by September 2010. Five BCMs were not prepared by the completion of our review. One UCA was definitized by the Defense Contract Management Agency, and MCSC was unable to obtain that UCA file in a timely manner.

Table 4. Documentation of Costs Incurred Before Definitization

Category	Number of Instances
Contract files did not include a discussion regarding how the costs before definitization affected the profit rates	45
Contract files did include a discussion that the contract status was considered when negotiating profit rates	33
UCA not fully definitized as of September 2010	4
BCM not prepared as of September 2010	5
Contract definitization documents not in MCSC custody	1
Total	88

MCSC contracting officials included a discussion that contract status was considered before definitization in the BCMs for 33 of the 78 UCAs; however, the discussions generally did not directly address the effect of the incurred costs before definitization on contractor profit determination. Although the contracting officials may have documented the cost incurred during the undefinitized period and used the weighted guidelines to develop a profit objective, they did not consistently document the resulting effect on the contractor's allowable profit because DD Form 1547 does not include these details. MCSC contracting officials should revise the profit section of the BCM to include requirements for contracting officials to document how the undefinitized period impacted the contractors profit or fee.

Examples of Adequate and Inadequate Documentation of Profit Determination in the Contract Files

We reviewed 78 contract files to determine whether MCSC contracting officials adequately documented the undefinitized period when determining the contractor's profit. We identified instances of adequate and inadequate documentation during our review.

MCSC contracting officials prepared the BCM for contract M67854-05-C-6016 that adequately documented the contracting official's consideration of the undefinitized period and its effect on the contractor's profit. The pre-negotiation BCM included statements that identified:

- that most of the work was completed before definitization,
- the risks to the contractor and Government regarding the undefinitized period,
- that the actual expenses should be known by the contractor because production had already begun,
- the suggested profit rate calculated using the weighted guidelines, and
- that the aggressive delivery schedule may be justification for a higher profit percentage because of the technical risks involved.

The post-negotiation BCM identified the negotiated profit rate and justified the contracting official's decision to definitize the award at a profit rate different from the weighted guidelines. The contracting officials documented their consideration of the

undefinitized period even though the contracting official ultimately decided to award a higher profit based on the risks taken by the contractor.

MCSC contracting officials prepared the BCM for contract M67854-07-D-5031, delivery order 01 that did not adequately document the contracting official's consideration of the undefinitized period and its effect on the contractor's profit. The BCM contained only a statement that the profit was set during a negotiations session between the contracting official and the vendor. We considered this documentation to be inadequate for several reasons. First, MCSC contracting officials did not provide details about the amount of costs incurred before definitization or provide any indication of costs incurred. Second, the contracting official did not document the risk factors that were assigned or the reasons the negotiator justified the profit or fee in the BCM. Finally, the contracting official did not state the effect of the incurred cost and the use of the weighted guidelines application on the contractor's profit.

For 45 of the 78 UCAs reviewed, MCSC officials did not adequately document the degree to which costs were incurred before definitization. MCSC officials should develop policy on documenting the profit section of the BCM and how the undefinitized period impacts the contractor's profit or fee. In addition, the policy should include instructions for MCSC contracting personnel to include and discuss inputs made to the Contract Type Risk section of the DD Form 1547.

MCSC Compliance With Obligation Limitations for UCAs

MCSC contracting officials exceeded the limitations for obligating funds on UCAs for 54 of the 88 UCAs reviewed and obtained a waiver for 1 of the UCAs reviewed. For the remaining 33 UCAs, the contracting officials limited the obligations in accordance with United States Code. Contracting officials are limited by 10 U.S.C. § 2326 in the amount of funds a contracting official may obligate on a UCA to 50 percent of the not-to-exceed-value before receiving a qualifying proposal and to 75 percent after receiving a qualifying proposal. Exceeding the allowable obligation thresholds puts the Government in a poor position to negotiate a contract at definitization because contractors are less inclined to submit a qualifying proposal when there is adequate funding available to continue the work.

Section 2326(b)(2) and (3), title 10, United States Code, states:

(2) Except as provided in paragraph (3), the contracting officer for an undefinitized contractual action may not obligate with respect to such contractual action an amount that is equal to more than 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(3) If a contractor submits a qualifying proposal (as defined in subsection (g)) to definitize an undefinitized contractual action before an amount equal to more than 50 percent of the negotiated overall ceiling price is obligated on such action, the contracting officer for such action may not obligate with respect to such contractual action an amount that is equal to more than 75 percent of the negotiated overall

ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

Section 2326(g)(2), title 10, United States Code, states:

The term “qualifying proposal” means a proposal that contains sufficient information to enable the Department of Defense to conduct complete and meaningful audits of the information contained in the proposal and of any other information that the Department is entitled to review in connection with the contract, as determined by the contracting officer.

Overall, MCSC contracting officials improperly obligated funds for 54 UCAs but have internally corrected obligation issues. In most instances of improper obligations, the contracting officials obligated 100 percent of the not-to-exceed price. An MCSC contracting official we interviewed stated that this practice was a result of the belief that the money should be obligated, but the “limitation of liability” clause would protect Government interests in negotiations. This improper obligation of funds practice occurred until approximately September 2008. According to the contracting officials, MCSC financial personnel informed the contracting officials that their method of obligating 100 percent of the contract was in violation of the 10 U.S.C 2326 (b)(2) and (3). All of the 22 UCAs MCSC contracting officials issued after August 29, 2008, were adequately obligated, with the exception of the funding restriction discussed in the Funding of Costs During the Undefinitized Period section. Because MCSC contracting officials corrected this deficiency, we do not have a recommendation to further address this issue.

Funding of Costs During the Undefinitized Period

MCSC contracting officials did not comply with funding policy established in the DPAP memorandum, “Management Oversight of UCAs,” August 29, 2008. The DPAP memorandum instructed contracting officials to assess the contractor’s spend plan for the undefinitized period and obligate funding in an amount consistent with the contractor’s requirements for the undefinitized period. MCSC contracting officials generally funded UCAs at 50 percent of funding or greater rather than funding the award in accordance with the DPAP memorandum. Further, contracting officials should avoid obligating the maximum allowable funding amount at the time of UCA award to discourage extended periods of performance before definitization. By funding UCAs at less than the maximum amount, MCSC contracting personnel can aid in timely contract definitization.

MCSC contracting officials did not sufficiently document that 50 percent of the funds were required for the undefinitized period of the contract. Although contract files contained information that indicated that contractors were increasing production to meet war efforts and incurring many costs before definitization, MCSC contracting officials should document the need for funding to the maximum allowable amount when issuing a UCA. We reviewed 22 UCAs issued by MCSC contracting officials after the issuance of the DPAP memorandum. Although the 22 UCAs were not 100 percent funded at UCA issuance, MCSC contracting personnel provided no indication in the contract files that contractors needed 50 percent of the funding for the undefinitized period. In fact, the

September 29, 2008, justification memorandum for contract M67854-08-D-0099, delivery order 1, noted that only 25 percent of the funds would be funded during the undefinitized period, but the MCSC contracting official obligated 50 percent of the funds at issuance. MCSC contracting officials can strengthen the Government's negotiation position by limiting funding to minimal amounts to help obtain a timely definitization. To obtain additional funding, the contractor will be more inclined to submit adequate proposals.

Documentation of a Fair and Reasonable Price

MCSC contracting personnel did not adequately document their determination of price reasonableness for 15 of 79 UCAs.⁶ FAR 15.403-3, "Requiring information other than cost or pricing data," requires that the contracting official obtain information that is adequate for evaluating price reasonableness. Further, FAR 15.406-3, "Documenting the negotiation," states that the contracting official must document a determination of fair and reasonable price in the contract file. We obtained and reviewed 18 contract files for 79 UCAs. We reviewed 15 UCAs that had no documentation to determine fair and reasonable pricing. Of those 15 UCAs, 13 were delivery orders on a single contract. Of the 13 delivery orders, 4 delivery orders had no information available for our review. For the other 9 delivery orders, the contractor applied expenses for greater than 100 percent of the not-to-exceed value of the award. MCSC contracting officials had no leverage to obtain a fair and reasonable price for these awards and, instead, definitized the award at 100 percent of the obligated amounts. We determined that 64 of the definitized UCAs contained adequate documentation; such as business clearance memoranda, certificates of current cost or pricing data, technical expert pricing reports, related audit reports, and similar-item pricing; to document contracting officials' determination of price reasonableness. We do not believe that the lack of documenting of a fair and reasonable pricing is a command-wide issue because most of the deficient UCAs were on a single contract; therefore, we are not making a recommendation to address this issue. Table 5 shows the types of support contracting officials relied on when determining price reasonableness.

⁶ Four awards were undefinitized and five BCMs were not prepared at the completion of our review.

Table 5. Documentation to Support the Determination of Price Reasonableness

Types of Support for Price Reasonableness	Number of UCAs That Included a Method to Determine Fair and Reasonable Pricing
Defense Contract Audit Agency, Canadian Commercial Corporation, or other audit agency audits	35
Technical evaluations	24
Forward-pricing rate agreements or forward-pricing rate recommendations	5
Results of negotiation session	45
Prices established in recent similar awards	7
Certified cost and pricing data	19

Proactive Measure Taken

As discussed earlier, MCSC contracting personnel corrected their own deficiency regarding limitations of obligations for UCA awards. In approximately September 2008, MCSC financial personnel informed the contracting officials that it was not acceptable to obligate 100 percent of the UCA not-to-exceed value at award. Coincidentally, this was about the same time period as the issuance of the DPAP policy memorandum that was issued on August 29, 2008, but we could not determine whether the memorandum was linked to this action. Previously, MCSC contracting officials had a practice of obligating 100 percent of the not-to-exceed value so that they could ensure that funds were available for the full award. However, this violates 10 U.S.C. 2326 (b) (2) and (3) which limits obligations to either 50 percent or 75 percent of not-to-exceed value predicated on the receipt of a qualifying proposal. MCSC contracting officials stated that they believed Government interests were protected if a UCA included FAR clause 52.216-24, "Limitation of Government Liability." However, with 100 percent of the funding obligated, contractors have less incentive to definitize the UCA in a timely manner. MCSC contracting officials obligated 21 of 22 UCAs issued after August 29, 2008, within the limitations established in 10 U.S.C. 2326 (b) (2) and (3) as opposed to only issuing 12 of 66 UCAs within the limitations from FY 2004 through August 28, 2008. For the UCA issued after August 29, 2008, that was not within the limitations, MCSC contracting officials properly obtained a waiver of the obligation limitations.

Conclusion

MCSC contracting officials should develop better practices when issuing and definitizing UCAs. We identified 239 total deficiencies in which MCSC contracting officials did not fully comply with UCA restrictions in the 88 UCAs that we reviewed. MCSC contracting officials prepared requests to issue a UCA that provided insufficient detail to authorize the UCA or justify the UCA request. They obligated funding on UCAs that were not in accordance with U.S.C. requirements. MCSC contracting officials did not definitize UCAs in a timely manner. Furthermore, they did not adequately document

their consideration of contractors' reduced risk when determining contractor profit. Finally, they did not always demonstrate that the Government obtained a fair and reasonable price.

Despite the issues that we identified, MCSC contracting officials generally used UCAs for life-saving requirements, in situations that avoided retrofitting items that were already being produced, or other appropriate situations. MCSC contracting officials were under extreme pressure to field products. In many cases, the underlying issues for the deficiencies were caused by non-contracting personnel. These deficiencies highlight the need for better cooperation and coordination between the program office, technical experts, financial, contracting, and contractor personnel to ensure that future UCAs comply with U.S.C. and acquisition regulations. Incorporating the following recommendations should reduce the number of noncompliant actions while still allowing contracting personnel to meet the needs of the warfighters.

Recommendations, Management Comments, and Our Response

We recommend that the Commander, Marine Corps Systems Command:

1. Develop a guide that can be used by contracting personnel before issuing an undefinitized contractual action that describes the additional justification and approval procedures; funding restrictions; documentation requirements, to include a discussion of how the undefinitized portion of the award affected the overall profit or fee; and definitization time restrictions associated with undefinitized contractual actions.

Commander, Marine Corps Systems Command Comments

The Chief of Staff, Marine Corps Systems Command, commented for the Commander. The Chief of Staff agreed and stated that the Marine Corps has developed a draft Quick Reference Guide for Undefinitized Contractual Actions and Letter Contracting. The Chief of Staff also stated that Marine Corps personnel have also developed an Undefinitized Contracting Action Process Guide. Both items are maintained on the Marine Corps Contracting Automated Information System Portal. The portal will also contain examples of appropriate documentation for awarding an undefinitized contractual action. The Chief of Staff stated that this and all other actions to address our recommendations will be finalized by November 30, 2010.

2. Develop procedures in the contract review process to help ensure that each undefinitized contractual action, including undefined delivery orders, are submitted for approval to the head of the agency or delegate and that each approval includes specific information such as the adverse impact on agency requirements.

Commander, Marine Corps Systems Command Comments

The Chief of Staff, Marine Corps Systems Command commented for the Commander. The Chief of Staff agreed and stated that the documents identified in his response to Recommendation 1 will be updated to also reflect this recommendation. The Chief of Staff also noted that the Assistant Commander, Contracts, has implemented an internal review process of undefinitized contractual action documentation.

3. Develop a method to track the elapsed days of Marine Corps Systems Command undefinitized contractual actions from issuance through definitization with other milestones such as receipt of a qualifying proposal. Additionally, implement procedures for documenting and receiving approval when undefinitized contractual actions extend beyond established time limitations or obligation criteria.

Commander, Marine Corps Systems Command Comments

The Chief of Staff, Marine Corps Systems Command, commented for the Commander. The Chief of Staff agreed and stated that undefinitized contractual action definitization schedules are established and that changes should be implemented into the contract through modification of the contract with appropriate approvals for schedule delays. Additionally, the Chief of Staff stated that the Marine Corps Systems Command is testing an automated tracking tool for undefinitized contractual actions on its contracting portal. The tool will be used to prepare required reports on undefinitized contractual actions and as a management tool to identify actions that are in jeopardy of extending beyond definitization timeliness.

4. Require that Marine Corps Systems Command contracting personnel better coordinate with customers to identify changes in Government requirements as soon as practicable and document changes in the acquisition narrative.

Commander, Marine Corps Systems Command Comments

The Chief of Staff, Marine Corps Systems Command, commented for the Commander. The Chief of Staff agreed and stated that the documents identified in his response to Recommendation 1 will be updated to also reflect this recommendation. According to the Chief of Staff, the Program Management Directorate will review policies to determine whether updates are required to better address use of undefinitized contractual actions.

5. Develop procedures so that Marine Corps program offices avoid requesting that Marine Corps Systems Command contracting officials issue undefinitized contractual actions if the awards are for known requirements.

Commander, Marine Corps Systems Command Comments

The Chief of Staff, Marine Corps Systems Command, commented for the Commander. The Chief of Staff agreed and stated that contracting personnel need to be more consistent in not awarding undefinitized contracting actions because of improper planning and will convey the need for better planning to their customers. Additionally,

the Chief of Staff stated that the Program Management Directorate will review policies to determine whether revisions are required to better reflect appropriate use of undefinitized contractual actions.

6. Require contracting officials to fund all undefinitized contractual actions at an amount consistent with costs during the scheduled undefinitized period so that both users and contractors have incentive to coordinate early and often about proposals, contractual needs, and funding.

Commander, Marine Corps Systems Command Comments

The Chief of Staff, Marine Corps Systems Command, commented for the Commander. The Chief of Staff agreed and stated that the documents identified in his response to Recommendation 1 will be updated to also reflect this recommendation.

7. Develop metrics for measuring contractor responsiveness in preparing qualifying proposals and whether delayed contractor responsiveness in preparing qualifying proposals should affect profit.

Commander, Marine Corps Systems Command Comments

The Chief of Staff, Marine Corps Systems Command, commented for the Commander. The Chief of Staff agreed and stated that the automated tracking tool identified in his response to Recommendation 3 will include metrics that will allow the Marine Corps to track the timeline and other milestones of the definitization process. Additionally, the Chief of Staff stated that the documents identified in his response to Recommendation 1 will be updated to also reflect this recommendation.

Our Response

The Chief of Staff's comments on Recommendations 1-7 were responsive, and no further comments are required.

Appendix A. Scope and Methodology

We conducted this performance audit from October 2009 through August 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We were unable to determine whether 10 of the UCAs in our sample fully meet the definitization requirements because the UCA documentation was not yet completed or were not available to the MCSC personnel. In many cases, we were not able to meet with the specific contracting officials responsible for issuing the UCA because they were no longer employed by MCSC. Furthermore, in many cases, we were unable to determine to what extent the undefinitized period was reflected in the contractor's profit because the negotiated profit did not differentiate between work completed before and after definitization.

GAO was conducting a review on the use of UCAs when our audit began. We limited our site selection to contracting offices that were not included in the GAO engagement. On September 23, 2009, DOD OIG management decided that the audit teams would prepare targeted audit reports for each activity and then issue a summary report. This is the first subproject resulting from the decision. This subproject included contracts issued by the Marine Corps Systems Command at Quantico, Virginia, and the Mine Resistant Armor Protected Vehicle Joint Program Office in Stafford, Virginia.

Universe and Sample Information

Initially, we used the FPDS-NG database to identify a universe of UCAs to review. We judgmentally selected eight action obligations coded as "C" type letter contracts from the FPDS-NG and that the MCSC contracting officials issued during FYs 2004 through 2009. The FPDS-NG universe consisted of 79 MCSC actions as of June 22, 2009, valued at about \$613 million. We selected actions that were within the audit scope; however we did not validate all data in the FPDS-NG universe. The contracts identified by the FPDS-NG queries were individually analyzed to ensure that they were accurately assigned the letter contract designation and contained at least one UCA. In addition, MCSC personnel provided a list of all UCAs issued by MCSC contracting officials during the period FY 2004 through FY 2009. This list contained 56 actions that MCSC identified as UCAs, but did not contain dollar values. Additionally, the list contained some items that did not fall within the scope of our review. Based on the FPDS-NG data and data MCSC contracting personnel provided, we used a nonstatistical judgment sample of 20 contracts containing 89 UCAs for review. From the 20 contracts selected, we only reviewed 18 contracts. One contract contained an option that would have resulted in a UCA if exercised, but MCSC contracting officials stated that they have no intention of exercising the option. The other contract was a foreign military sales contract coded as a UCA. However, it was never used as a UCA, but rather a small business set aside, follow-on

contract in place for the United Kingdom government. Additionally, one UCA that we identified was terminated for convenience, so we excluded it from our review. Our final nonstatistical judgment sample consisted of 88 UCAs: 6 UCAs on 6 letter contracts and 82 UCAs on 12 indefinite-delivery, indefinite-quantity contracts. See Appendix C for a list of UCAs that we reviewed.

Review of Documentation and Interviews

We downloaded and reviewed selected contracts and modifications from the Electronic Document Access database and obtained and reviewed contract documentation from MCSC contracting personnel. We then combined all of the data to perform an analysis to determine compliance with 10 U.S.C. § 2326. We determined, by analyzing documentation and conducting contracting officer interviews, whether the contracts underwent price reasonableness determinations. We also determined whether MCSC personnel complied with requirements from the August 29, 2008, DPAP memorandum that contracting officers should avoid obligating the maximum permissible funding at the time of UCA award.

We relied on interviews performed at the Office of Defense Procurement and Acquisition Policy by audit team members for the main UCA project. We interviewed contracting and procurement officials responsible for award and definitization of letter contracts and related management control programs at MCSC contracting offices.

We reviewed documentation maintained by MCSC contracting personnel to support letter contracts and delivery order contracts awarded or definitized from FY 2004 through FY 2009. We reviewed:

- UCA request and authorization documentation,
- justification and approvals,
- contract modifications,
- price negotiation memoranda,
- business clearance memoranda,
- Defense Contract Audit Agency or other audit reports, and
- contractor proposals.

We evaluated documentation maintained by MCSC contracting personnel against applicable criteria including:

- Statutes and Public Laws: Public Law 99-591, “Continuing Appropriations for Fiscal Year 1987”; Public Law 110-181, “National Defense Authorization Act for FY 2008”; 10 U.S.C. Section 2326, “Undefinitized Contractual Actions: Restrictions”;

- Federal Acquisition Requirements: FAR Subpart 6.3, "Other than Full and Open Competition"; FAR Subpart 15.4, "Contract Pricing"; FAR Subpart 16.6, "Time-and-Materials, Labor Hour, and Letter Contracts"; FAR Subpart 52.2, "Text of Provisions and Clauses";
- Defense Federal Acquisition Regulation Supplement: DFARS Subpart 215.404, "Proposal Analysis"; DFARS Subpart 216.6, "Time-and-Materials, Labor Hour, and Letter Contracts"; DFARS Subpart 217.74, "Undefinitized Contract Actions"; DFARS case 2008-D034, "Management of Unpriced Change Orders";
- Marine Corps Acquisition Procedures Supplement: Marine Corps Acquisition Procedures Supplement Subpart 17.74, "Undefinitized Contract Actions"; and
- Memoranda: Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics memorandum, "Management Oversight of Undefinitized Contract Actions," August 29, 2008.

Use of Computer-Processed Data

We relied on computer-processed data from FDPS-NG to determine the contracting organizations to visit and to perform the audit nonstatistical judgment sample selection. We also used Electronic Document Access to obtain contract documentation. The data were not a basis for our conclusions or finding. To assess the accuracy of computer-processed data, we verified the FPDS-NG and Electronic Document Access data against official records at visited contracting activities. We determined that data obtained through FPDS-NG and Electronic Document Access were sufficiently reliable to accomplish our audit objectives when compared with contract records.

Use of Technical Assistance

We relied on interviews conducted by our team members for the main UCA project. We interviewed personnel from the DOD IG Quantitative Methods and Analysis Division and decided to use FPDS-NG data to judgmentally select contracting activities. We used FPDS-NG data in combination with contract data provided by the contracting activity to judgmentally select UCAs to review. The nonstatistical judgment sample was limited to specific contracts and our results should not be projected across other MCSC-issued contracts.

Prior Coverage

During the last 6 years, GAO and the DOD IG have issued four reports discussing DOD use of UCAs. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted DOD IG reports can be accessed over the Internet at <http://www.dodig.mil>.

GAO

GAO Report No. GAO-10-299, "DOD Has Enhanced Insight into Undefined Contract Action Use, but Management at Local Commands Needs Improvements," January 28, 2010

GAO Report No. GAO-07-0559, "Defense Contracting: Use of Undefined Contract Actions Understated and Definition Time Frames Often Not Met," June 19, 2007

DOD IG

DOD IG Report No. D-2010-080, "Air Force Electronic Systems Center's Use of Undefined Contractual Actions," August 18, 2010

DOD IG Report No. D-2004-112, "Undefined Contractual Actions," August 30, 2004

Appendix B. August 29, 2008, Office of Defense Procurement and Acquisition Policy Memorandum*



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

AUG 29 2008

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(POLICY AND PROCUREMENT), ASA(ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION AND LOGISTICS MANAGEMENT),
ASN(RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Management Oversight of Undefinitized Contract Actions

An undefinitized contract action (UCA) is one for which the contract terms, specifications, or price are not agreed upon before performance is begun. Examples include letter contracts or undefinitized orders issued against basic ordering agreements or task/delivery order contracts. A UCA is a valuable tool for meeting urgent requirements. However, without appropriate management and controls, these instruments can lead to increased cost risks for the Department.

A recent Government Accountability Office (GAO) review of DoD UCAs (GAO-07-559) identified a need for enhanced oversight. In addition, section 809 of the FY 2008 National Defense Authorization Act requires issuance of detailed instructions to ensure oversight of UCAs. Specific issues include appropriate use of UCAs; timely definitization; obligation amounts prior to definitization; and appropriate recognition in profit or fee of the contractor's reduced risk during the undefinitized period.

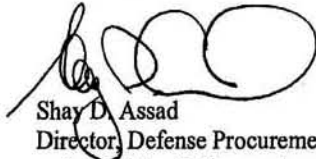
DFARS 217.74, Undefinitized Contract Actions, provides DoD policies and procedures for the appropriate use of UCAs and related approval requirements. When possible, to discourage extended periods of performance prior to definitization, contracting officers should avoid obligating the maximum permissible funding at the time of UCA award. Contracting officers should assess the contractor's spend plan for the undefinitized period, and obligate funds only in an amount consistent with the



contractor's requirements for the undefinitized period. In general, when negotiating profit or fee, it is appropriate to apply the contract risk factor for cost reimbursement contracts to the actual cost of performance prior to definitization (DD Form 1547, Record of Weighted Guidelines Application, Block 24, Contract Type Risk). Contracting officers should note the guidance at DFARS 215.404-71-3(d)(2) which indicates that, when costs have been incurred prior to definitization, generally the contract type risk should be regarded to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, contracting officers may assign a value as low as 0 percent, regardless of contract type. Contracting officers must document the risk assessment in the contract file.

To provide enhanced management insight and oversight of UCAs, we have established the attached templates for UCA Management Plans and semi-annual Consolidated UCA Reports for UCAs with an estimated value of more than \$5 million. Together, the plans and reports provide information on key aspects of UCA use and management, including actions taken to ensure timely and effective definitization. Initial UCA Management Plans are due no later than 30 days after the date of this policy memorandum. The initial Consolidated UCA Reports are due on 31 October 2008. Plan Updates and Consolidated UCA Reports are due semi-annually thereafter.

Please provide your UCA management point of contact as soon as possible to Mr. John Tenaglia who can be reached at john.tenaglia@osd.mil or 703-697-8334.



Shay D. Assad
Director, Defense Procurement,
Acquisition Policy, and
Strategic Sourcing

Attachments:
As stated

*We removed attachments to the memorandum from the audit report.

Appendix C. Undefined Contractual Actions Reviewed

MCSC Use of Undefined Contractual Actions for FYs 2004–2009

UCA Number	Contract Number	DO ¹ / Modification Number	Description of Supplies or Services Procured	Contract ² Type	Issuance Date	NTE ³ Amount (\$)
	M67854-04-D-5016					
1		DO 0005	Engineering Change Proposal 59 MTRV Armor Kits	FFP	September 8, 2004	144,641,358
2		DO 0014	Labor, Material Costs, Travel costs, Factory/Technician Training for Engineering Change Proposal 59R1/64 Installation	#	April 8, 2005	37,424,767
3		DO 0047	Multiple Engineering Change Proposals	FFP	March 31, 2008	135,664,416
4	M67854-05-C-6016		Transparent Armor Gun Shields	CPFF/FFP	July 20, 2005	1,300,000
5	M67854-05-D-5017		Expeditionary Assault Bridge Launcher	FFP	April 19, 2005	5,596,650
6	M67854-06-C-6023		Transparent Armor Gun Shields	FFP	Jan 3, 2007	9,517,999
	M67854-06-D-7003					
7		DO 0001	Various Supplies and Services	CPFF/FFP	Nov 3, 2005	71,610,613
8		DO 0001 Mod 02	Support, Maintenance, Training	CPFF/FFP	March 9, 2006	10,202,064
9		DO 0002	Vehicle Installation Kit	FFP	April 14, 2006	49,304,365
10		DO 0002 Mod 02	Ground Electronic Counter Measure	FFP	June 14, 2006	49,842,621
11		DO 0003	Vehicle Installation Kit - LVS	FFP	June 9, 2006	2,362,302
12		DO 0005 Mod 01	Global Positioning System	#	April 5, 2007	6,357,721
13		DO 0005 Mod 04	Global Positioning System/Common Timing Protocol	#	Oct 22, 2007	6,312,672
14		DO 0005 Mod 51A	Remote Control Units	#	Oct 30, 2007	13,607
15		DO 0007	MTRV Vehicle Installation Long Bed Modification Kit	#	Jan 18, 2007	525,000
16		DO 0007 Mod 03	Vehicle Installation Kit	#	Oct 22, 2007	155,629
17	M67854-06-D-7003	DO 0007 Mod 04	Universal Vehicle Installation Kit	#	Dec 26, 2007	706,124
18		DO 0009	Wrecker Modification Kit	#	May 9, 2007	97,341
19		DO 0010	Removal of Excess Material	#	April 25, 2007	35,338

Appendix C. Undefined Contractual Actions Reviewed (cont'd)

MCSC Use of Undefined Contractual Actions for FYs 2004–2009

UCA Number	Contract Number	DO ¹ / Modification Number	Description of Supplies or Services Procured	Contract ² Type	Issuance Date	NTE ³ Amount (\$)
20	M67854-06-D-7003	DO 0012	Band 3 Communication Filter Kits	#	Aug 6, 2007	230,578
21		DO 0013	RBL Spare Parts	#	May 17, 2007	86,999
22		DO 0013 Mod 04	RBL Spare Parts	#	Aug 21, 2007	2,839,410
23		DO 0013 Mod 08	RBL Spare Parts	#	Dec 26 2007	16,665
24		DO 0013 Mod 09	Shipment of Government Furnished Property within Continental United States	#	March 31, 2008	7,850
25		DO 0015 Mod 02	Antenna Modification Kits	#	Jan 30, 2008	61,930
26		DO 0016	High Band Extension	#	Sep 28, 2007	1,608,588
27		DO 0017 Mod 01	MTVR Dump Vehicle Installation Kits	#	Dec 19, 2007	609,157
28		DO 0018 Mod 01	MTVR Tractor Vehicle Installation Kits	#	Dec 26, 2007	499,475
	M67854-06-D-7004					
29		DO 0002 Mod 03	Internal and External Mounting Solutions	CPFF/FFP	Sep 19, 2006	40,961,487
30		DO 0002 Mod 04	Universal LAV Antenna/Integration Kit	#	Nov 20, 2006	3,778,669
31		DO 0002 Mod 08	Universal HMMWV Delta Kit	#	Feb 8, 2007	469,863
32		DO 0004	Global Positioning System and Dual Band	FFP	Aug 24, 2006	37,996,532
33		DO 0004 Mod 41A	Global Positioning System Upgrade Kits	FFP	Oct 27, 2006	1,548,708
34		DO 0005 Mod 51A	General Dynamics Armament and Technical Products	FFP	Oct 24, 2006	1,852,279
35		DO 0008	Vehicle Installation Kits	FFP	Feb 28, 2007	3,113,312
36		DO 0009	Chameleon Vehicle Spare Parts	FFP	April 6, 2007	4,581,727
37		DO 0010	Mast Protection System	FFP	March 27, 2007	64,335
38		DO 0011	Broadband Filter Retrofit Kit	FFP	April 4, 2007	568,028
39		DO 0013	Bench Stocks	#	July 11, 2007	23,049
40	M67854-07-C-1034		Design and Develop Two (2) anti Sniper Infrared Targeting System	CPFF/FFP	Dec 1, 2006	9,900,000
41	M67854-07-C-2062		Target Location Designation and Hand-off Systems	FFP/CPFF/T&M	Aug 22, 2006	24,820,687

Appendix C. Undefined Contractual Actions Reviewed (cont'd)

MCSC Use of Undefined Contractual Actions for FYs 2004–2009

UCA Number	Contract Number	DO ¹ / Modification Number	Description of Supplies or Services Procured	Contract ² Type	Issuance Date	NTE ³ Amount (\$)
42	M67854-07-C-6047		MRAP Marine Corps Transparent Armor Gun Shield	FFP	July 5, 2007	39,808,100
43	M67854-07-D-1011		Miniature Night Sight	FFP	Aug 3, 2007	74,000,000
	M67854-07-D-5025					
44		DO 0002 Mod 11	CAT II Authorized Stockage List	FFP	Nov 1, 2007	25,837,650
45		DO 0006	Category II MRAP and Modifications	FFP	Dec 18, 2007	341,725,800
46		DO 0009	Category I MRAP - USSOCOM Variant Engineering Change Proposals	FFP	July 17, 2008	33,630,574
47		DO 0003 Mod 14	Gunners Platform Spacer	FFP	Dec 11, 2008	1,873,460
48		DO 0009 Mod 7 ⁴	SOCOM CAT I MRAP RG-33 Independent Suspension Solutions with Central Tire Inflation Sys	FFP	July 24, 2009	73,527,280
49		DO 0010	Category I MRAP USSOCOM Variant	FFP	May 15, 2009	2,082,912
50		DO 0009 Mod 6	SOCOM Plus AI Upgrade	FFP	June 29, 2009	835,000
51	M67854-07-D-5028		MRAP Accessories and Services	FFP	Jan 25, 2007	67,891,897
52		DO 0003 Mod 3	Prescribed Load List	FFP	Jan 18, 2008	63,021,802
53		DO 0004	Category II MRAP Variant	FFP	July 17, 2008	101,740,466
54		DO 0004 Mod 1	Additional Low Rate Initial Production 12 Engineering Change Proposals	FFP	Aug 21, 2008	17,868,140
55		DO 0005	Low Rate Initial Production 13 Engineering Change Proposals	FFP	Sept 4, 2008	4,841,635
56		DO 0004 Mod 4	Enhanced Maneuverability	FFP	Oct 28, 2008	8,060,000
57		DO 0004 Mod 8	Field Service Representative - OCONUS	FFP	Dec 11, 2008	49,503,818
58		DO 0004 Mod 16	Vehicle Testing - Reduced Turning Radius	FFP	Feb 27, 2009	190,062
	M67854-07-D-5030					
59		DO 0002, Mod 10	CAT I Authorized Stockage List	FFP	Nov 8, 2007	137,880,183
60		DO 0003	Variety of Engineering Change Proposal to upgrade MRAP I	FFP	Dec 18, 2007	159,609,374

Appendix C. Undefined Contractual Actions Reviewed (cont'd)

MCSC Use of Undefined Contractual Actions for FYs 2004–2009

UCA Number	Contract Number	DO ¹ / Modification Number	Description of Supplies or Services Procured	Contract ² Type	Issuance Date	NTE ³ Amount (\$)
61	M67854-07-D-5030	DO 0005 Mod 1	Engineering Change Proposals	FFP	Dec 22, 2008	312,996
62		DO 0005 Mod 2	Fast Track and Capability Insertion	FFP	April 24, 2009	19,036,693
63		DO 0003 Mod 18	Fleet Seat Upgrades	FFP	Sep 1, 2009	29,813,181
	M67854-07-D-5031					
64		DO 0007	Various MRAP Engineering Change Proposals	FFP	Dec 18, 2007	154,127,869
65		DO 0006	Technical Insertion Prototype MRAP vehicle for test	FFP	Oct 18, 2007	33,772,865
66		DO 0012	CAT I Independent Suspension	FFP	April 8, 2009	279,232,537
67		DO 0009	Engineering Change Proposals	FFP	Jul 17, 2008	711,072
68		DO 0001, Mod 4	New Equipment Training	FFP	March 13, 2008	5,958,436
69		DO 0010	Engineering Change Proposal Alternator Upgrade	FFP	Sep 4, 2008	4,053,459
	M67854-07-D-5032					
70		DO 0002, Mod 19	MRAP Modifications and Spare Parts	FFP	July 18, 2008	9,929,506
71		DO 0004, Mod 6	MRAP Parts and Services	FFP	Jul 25, 2008	5,671,032
72		DO 0005, Mod 7	MRAP Parts and Services	FFP	Jul 23, 2008	7,811,750
73		DO 0006, Mod 6	MRAP Parts and Services	FFP	Jul 25, 2008	11,717,625
74		DO 0007 Mod 03	MRAP Parts and Services	FFP	Jul 25, 2008	5,804,130
75		DO 0007 Mod 01	Engineering Change Proposal - Ambulance Variant	FFP	April 14, 2008	6,684,515
76		DO 0008 Mod 03	Engineering Change Proposals	FFP	Feb 27, 2009	293,391
77		DO 0008 Mod 01	Engineering Change Proposals	FFP	Aug 22, 2008	12,143,500
78		DO 0009 Mod 03	MaxxPro DASH Production Acceleration	FFP	Sep 30, 2008	12,700,000
79		DO 0009 Mod 08	Bar Armor Integration	FFP	May 8, 2009	902,843
80		DO 0009	Supplies	FFP	Sep 4, 2008	138,349,679
81		DO 0010	SPAWAR GFE Integration	FFP	Dec 10, 2008	2,192,860
82		DO 0010	120 V Electrical Harness/Power	FFP	Dec 10, 2008	62,080,592

Appendix C. Undefined Contractual Actions Reviewed (cont'd)

MCSC Use of Undefined Contractual Actions for FYs 2004–2009

UCA Number	Contract Number	DO ¹ / Modification Number	Description of Supplies or Services Procured	Contract ² Type	Issuance Date	NTE ³ Amount (\$)
	M67854-08-D-5099					
83		DO 0001	Supplies/Services	FFP	Sep 29, 2008	23,430,000
84	M67854-09-C-5064		Tanker Ballistic Protection System	FFP	June 12, 2009	5,189,655
	M67854-05-D-6014					
85		P00043	Internally Transportable Vehicle	CPFF	Sep 5, 2006	8,897,629
86		P00031	High Explosives	FFP	April 26, 2006	9,778,631
87		P00014	Ammunition Requirements	FFP	July 11, 2005	7,383,791
88		DO 4 & 5	Expeditionary Fire Support System and Internally Transportable Vehicle Program	FFP	Oct 12, 2007	20,990,394

¹ DO: Delivery Order

²FFP: firm-fixed-price; T&M: time-and-materials; CPFF: cost-plus-fixed-fee.

³NTE: not-to-exceed amount.

⁴ Multiple UCAs were issued simultaneously for similar supplies. We analyzed these awards as one UCAs because the contracting officer only prepared one UCA justification memorandum. The information reported contains information from modifications on multiple delivery orders, but we identified the UCA as a modification to Delivery Order 0009 because that was where the information was contained in the contracting files.

#: Documentation obtained not sufficient to adequately determine.

Appendix D. Deficiencies Identified

Detailed Results of Undefined Contractual Actions Reviewed

Deficiencies in MCSC Use of Undefined Contractual Actions								
UCA Number	Contract Number	DO/Modification Number	Inadequate Justification to Issue a UCA	Inadequate Authorization to Issue a UCA	Definitization Untimely	Obligation Limits Exceeded	Inadequate Documentation of Fair and Reasonable Pricing	Inadequate Profit Determination Documentation
	M67854-04-D-5016							
1		DO 0005			√	√		
2		DO 0014			√	√	√	√
3		DO 0047				√		
4	M67854-05-C-6016							
5	M67854-05-D-5017				√	√		
6	M67854-06-C-6023							
	M67854-06-D-7003							
7		DO 0001	√	√	√	√	√	√
8		DO 0001 Mod 02	√	√		√	√	√
9		DO 0002	√	√		√	√	√
10		DO 0002 Mod 02	√	√		√	√	√
11		DO 0003	√	√	√	√	√	√
12		DO 0005 Mod 01	√	√	√	√	√	√
13		DO 0005 Mod 04	√	√	√	√	√	√
14		DO 0005 Mod 51A	√	√	√	√	√	√
15		DO 0007	√	√	√	√		√
16		DO 0007 Mod 03	√	√	√	√		√
17		DO 0007 Mod 04	√	√	√	√		√
18		DO 0009	√	√	√	√		√
19		DO 0010	√	√	√	√		√
20		DO 0012	√	√	√	√		√

Appendix D. Deficiencies Identified (cont'd)

Detailed Results of Undefined Contractual Actions Reviewed

Deficiencies in MCSC Use of Undefined Contractual Actions								
UCA Number	Contract Number	DO/Modification Number	Inadequate Justification to Issue a UCA	Inadequate Authorization to Issue a UCA	Definitization Untimely	Obligation Limits Exceeded	Inadequate Documentation of Fair and Reasonable Pricing	Inadequate Profit Determination Documentation
21	M67854-06-D-7003	DO 0013	√	√	√	√	√	√
22		DO 0013 Mod 04	√	√	√	√	√	√
23		DO 0013 Mod 08	√	√	√	√	√	√
24		DO 0013 Mod 09	√	√	√	√	√	√
25		DO 0015 Mod 02	√	√	√	√		√
26		DO 0016	√	√	√	√	√	√
27		DO 0017 Mod 01	√	√	√	√		√
28		DO 0018 Mod 01	√	√	√	√		√
	M67854-06-D-7004							
29		DO 0002 Mod 03	√	√		√		
30		DO 0002 Mod 04	√	√		√		
31		DO 0002 Mod 08	√	√		√		
32		DO 0004	√	√	√	√		
33		DO 0004 Mod 41A	√	√		√		
34		DO 0005 Mod 51A	√	√	√	√		
35		DO 0008	√	√	√	√		√
36		DO 0009	√	√	√	√		√
37		DO 0010	√	√	√	√		√
38		DO 0011	√	√	√	√		√
39		DO 0013	√	√	√	√		√
40	M67854-07-C-1034				√			
41	M67854-07-C-2062				√	√		
42	M67854-07-C-6047					√		

Appendix D. Deficiencies Identified (cont'd)

Detailed Results of Undefined Contractual Actions Reviewed

Deficiencies in MCSC Use of Undefined Contractual Actions								
UCA Number	Contract Number	DO/Modification Number	Inadequate Justification to Issue a UCA	Inadequate Authorization to Issue a UCA	Definitization Untimely	Obligation Limits Exceeded	Inadequate Documentation of Fair and Reasonable Pricing	Inadequate Profit Determination Documentation
43	M67854-07-D-1011		√		√			
	M67854-07-D-5025							
44		DO 0002 Mod 11				√		
45		DO 0006				√		
46		DO 0009			√		√	
47		DO 0003 Mod 14			√			
48		DO 0009 Mod 7			√			
49		DO 0010			√			
50		DO 0009 Mod 6						
51	M67854-07-D-5028					√		√
52		DO 0003 Mod 3				√		√
53		DO 0004						√
54		DO 0004 Mod 1			√			√
55		DO 0005			√			√
56		DO 0004 Mod 4			√			√
57		DO 0004 Mod 8			√			√
58		DO 0004 Mod 16						√
	M67854-07-D-5030							
59		DO 0002 Mod 10				√		
60		DO 0003			√	√		
61		DO 0005 Mod 1			√			
62		DO 0005 Mod 2			√*			
63		DO 0003 Mod 18		√				

Appendix D. Deficiencies Identified (cont'd)

Detailed Results of Undefined Contractual Actions Reviewed

Deficiencies in MCSC Use of Undefined Contractual Actions								
UCA Number	Contract Number	DO/Modification Number	Inadequate Justification to Issue a UCA	Inadequate Authorization to Issue a UCA	Definitization Untimely	Obligation Limits Exceeded	Inadequate Documentation of Fair and Reasonable Pricing	Inadequate Profit Determination Documentation
	M67854-07-D-5031							
64		DO 0007			√	√		√
65		DO 0006			√	√		
66		DO 0012						√
67		DO 0009			√			√
68		DO 0001 Mod 4				√		√
69		DO 0010			√			√
	M67854-07-D-5032							
70		DO 0002 Mod 19			√	√		
71		DO 0004 Mod 6			√	√		
72		DO 0005 Mod 7			√	√		
73		DO 0006 Mod 6			√	√		
74		DO 0007 Mod 03			√	√		
75		DO 0007 Mod 01				√		
76		DO 0008 Mod 03						
77		DO 0008 Mod 01			√			
78		DO 0009 Mod 03			√			
79		DO 0009 Mod 08						
80		DO 0009			√*			
81		DO 0010						
82		DO 0010			√*			
	M67854-08-D-5099							
83		DO 0001						√
84	M67854-09-C-5064							

Appendix D. Deficiencies Identified (cont'd)

Detailed Results of Undefined Contractual Actions Reviewed

Deficiencies in MCSC Use of Undefined Contractual Actions								
UCA Number	Contract Number	DO/Modification Number	Inadequate Justification to Issue a UCA	Inadequate Authorization to Issue a UCA	Definitization Untimely	Obligation Limits Exceeded	Inadequate Documentation of Fair and Reasonable Pricing	Inadequate Profit Determination Documentation
	M67854-05-D-6014							
85		P00043						√
86		P00031						√
87		P00014			√			√
88		DO 0004 & 0005			√			
Total			34	34	57	54	15	45

√ Discrepancy Noted.

* Undefined as of September 2010.

Appendix E. Definitization Elapsed Days for MCSC UCAs

Marine Corps Systems Command's Definitization Details for FYs 2004—2009

Contract Number	DO/ Modification Number	Issue Date	Qualifying Proposal Date	Definitization Date	Days from Award to Receipt of Qualifying Proposal	Days from Receipt of Qualifying Proposal to Definitization	Days From Award to Definitization
M67854-04-D-5016							
	DO 0005	9/8/2004	5/18/2005	6/8/2005 and 10/26/05	252	21 and 161	273 and 413
	DO 0014	4/8/2005		1/11/2006			278
	DO 0047	3/31/2008	7/28/2008	9/22/2008	119	56	175
M67854-05-C-6016		7/20/2005	10/17/2005	10/21/2005	89	4	93
M67854-05-D-5017		4/19/2005	2/1/2005	10/5/2007	Received before issue date		899
M67854-06-C-6023		1/3/2007	11/9/2006	6/29/2007	Received before issue date		177
M67854-06-D-7003							
	DO 0001	11/3/2005		6/27/2006			236
	DO 0001 Mod 02	3/9/2006		6/27/2006			110
	DO 0002	4/14/2006		6/29/2006			76
	DO 0002 Mod 02	6/14/2006		6/29/2006			15
	DO 0003	6/9/2006	2/26/2009	3/17/2009	993	19	1012
	DO 0005 Mod 01	4/5/2007	9/9/2008	10/3/2008	523	24	547
	DO 0005 Mod 04	10/22/2007		10/3/2008			347
	DO 0005 Mod 51A	10/30/2007		10/3/2008			339
	DO 0007	1/18/2007		10/29/2008			650

Appendix E. Definitization Elapsed Days for MCSC UCAs (cont'd)

Marine Corps Systems Command's Definitization Details for FYs 2004—2009

Contract Number	DO/ Modification Number	Issue Date	Qualifying Proposal Date	Definitization Date	Days from Award to Receipt of Qualifying Proposal	Days from Receipt of Qualifying Proposal to Definitization	Days From Award to Definitization
M67854-06-D-7003	DO 0007 Mod 03	10/22/2007		10/29/2008			373
	DO 0007 Mod 04	12/26/2007		10/29/2008			308
	DO 0009	5/9/2007		10/29/2008			539
	DO 0010	4/25/2007		10/21/2008			545
	DO 0012	8/6/2007		10/15/2008			436
	DO 0013	5/17/2007	2/25/2009	3/17/2009	650	20	670
	DO 0013 Mod 04	8/21/2007	2/25/2009	3/17/2009	554	20	574
	DO 0013 Mod 08	12/26/2007	2/25/2009	3/17/2009	427	20	447
	DO 0013 Mod 09	3/31/2008	2/25/2009	3/17/2009	331	20	351
	DO 0015	1/30/2008	10/9/2008	10/21/2008	253	12	265
	DO 0016	9/28/2007	10/20/2008	10/29/2008	388	9	397
	DO 0017	12/19/2007		7/16/2008			210
	DO 0018 Mod 01	12/26/2007		7/8/2008			195
M67854-06-D-7004							
	DO 0002 Mod 03	9/19/2006	3/1/2007	6/13/2007	163	104	267
	DO 0002 Mod 04	11/20/2006	3/1/2007	6/13/2007	101	104	205
	DO 0002 Mod 08	2/8/2007	3/1/2007	6/13/2007	21	104	125
	DO 0004	8/24/2006	3/1/2007	6/12/2007	189	103	292
	DO 0004 Mod 41A	10/27/2006	3/1/2007	6/12/2007	125	103	228
	DO 0005 Mod 51A	10/24/2006	1/30/2007	5/6/2008	98	462	560
	DO 0008	2/28/2007	8/29/2007	5/21/2008	182	266	448
	DO 0009	4/6/2007	2/11/2007	4/23/2008	Received before issue date		383

Appendix E. Definitization Elapsed Days for MCSC UCAs (cont'd)

Marine Corps Systems Command's Definitization Details for FYs 2004—2009

Contract Number	DO/ Modification Number	Issue Date	Qualifying Proposal Date	Definitization Date	Days from Award to Receipt of Qualifying Proposal	Days from Receipt of Qualifying Proposal to Definitization	Days From Award to Definitization
M67854-06-D-7004	DO 0010	3/27/2007	3/19/2007	1/31/2008	Received before issue date		310
	DO 0011	4/4/2007	3/1/2007	3/4/2008	Received before issue date		335
	DO 0013	7/11/2007	6/21/2007	3/11/2008	Received before issue date		244
M67854-07-C-1034		12/1/2006		7/19/2007			230
M67854-07-C-2062		8/22/2006	10/16/2006	Effective 3/8/2007, but not signed until 11/14/2007	Received before issue date		449
M67854-07-C-6047		7/5/2007	9/18/2006	11/20/2007	Received before issue date		138
M67854-07-D-1011		8/3/2007	6/29/2007	2/5/2008	Received before issue date		186
M67854-07-D-5025							
	DO 0002, Mod 11	11/1/2007		3/24/2008			144
	DO 0006	12/18/2007		4/28/2008			132
	DO 0009	7/17/2008	8/14/2008	9/11/2009	28	393	421
	DO 0003 Mod 14	12/11/2008	10/7/2008	7/21/2009	Received before issue date		222
	DO 0009 Mod 7	7/24/2009	9/3/2009	NOT DEF	41		
	DO 0010	5/15/2009		5/21/2010			371
	DO 0009 Mod 6	6/29/2009		11/20/2009			144
M67854-07-D-5028							
	DO 0003 Mod 3	1/18/2008	2/25/2008	3/20/2008	38	24	62

Appendix E. Definitization Elapsed Days for MCSC UCAs (cont'd)

Marine Corps Systems Command's Definitization Details for FYs 2004—2009

Contract Number	DO/ Modification Number	Issue Date	Qualifying Proposal Date	Definitization Date	Days from Award to Receipt of Qualifying Proposal	Days from Receipt of Qualifying Proposal to Definitization	Days From Award to Definitization
M67854-07-D-5028	DO 0004	7/17/2008	8/28/2008	2/2/2009	42	158	200
	DO 0004 Mod 1	8/21/2008	11/24/2008	4/22/2009	94	149	244
	DO 0005	9/4/2008	4/1/2009	4/30/2009	209	29	238
	DO 0004 Mod 4	10/28/2008	4/27/2009	5/12/2009	181	15	196
	DO 0004 Mod 8	12/11/2008	7/31/2009	8/13/2009	232	13	245
	DO 0004 Mod 16	2/27/2009	3/10/2009	3/16/2009	11	6	17
M67854-07-D-5030							
	DO 0002 Mod 10	11/8/2007		various			
	DO 0003	12/18/2007		various			Up to 800
	DO 0005 Mod 1	12/22/2008		9/28/2009			280
	DO 0005 Mod 2	4/24/2009		NOT DEF			
	DO 0003 Mod 18	9/1/2009	2/14/2010	8/11/2010	166	178	344
M67854-07-D-5031							
	DO 0007	12/18/2007		various			Up to 314
	DO 0006	10/18/2007		various			Up to 230
	DO 0012	4/8/2009	5/13/2009	various	35		
	DO 0009	7/17/2008		7/23/2010			736
	DO 0001, Mod 4	3/13/2008	5/22/2008	6/25/2008	70	34	104
	DO 0010	9/4/2008		9/24/2009			385
M67854-07-D-5032							
	DO 0002 Mod 19	7/18/2008		6/2/2009			319
	DO 0004 Mod 06	7/25/2008	1/27/2009	4/21/2009	196	74	270
	DO 0005 Mod 07	7/23/2008		2/27/2009			219
	DO 0006 Mod 06	7/25/2008		3/31/2009			249

Appendix E. Definitization Elapsed Days for MCSC UCAs (cont'd)

Marine Corps Systems Command's Definitization Details for FYs 2004—2009

Contract Number	DO/ Modification Number	Issue Date	Qualifying Proposal Date	Definitization Date	Days from Award to Receipt of Qualifying Proposal	Days from Receipt of Qualifying Proposal to Definitization	Days From Award to Definitization
M67854-07-D-5032	DO 0007 Mod 03	7/25/2008		3/31/2009			249
	DO 0007 Mod 01	4/14/2008	3/7/2008	5/6/2008	Received before issue date		22
	DO 0008 Mod 03	2/27/2009	8/7/2009	8/25/2009	161	18	179
	DO 0008 Mod 01	8/22/2008	6/3/2009	7/30/2009	285	57	342
	DO 0009 Mod 03	9/30/2008	6/3/2009	various	246		
	DO 0009 Mod 08	5/8/2009		9/23/2009			138
	DO 0009	9/4/2008		8/6/2009			336
	DO 0010	12/10/2008	5/21/2009	2/23/2009	162	Definitized 87 days before receiving the Qualifying proposal	75
	DO 0010	12/10/2008	5/21/2009	8/4/2009	85	122	237
M67854-08-D-5099							
	DO 0001	9/29/2008	12/23/2008	4/23/2009	85	122	206
M67854-09-C-5064		6/12/2009	4/27/2009	12/7/2009	Received before issue date		178
M67854-05-D-6014							
	P00043	9/5/2006	1/12/2007	6/14/2007	129	153	282
	P00031	4/26/2006	3/31/2006	8/29/2006	Received before issue date		125
	P00014	7/11/2005	6/28/2005	3/16/2006	Received before issue date		248
	DO 4 & 5	10/12/2007	4/8/2008	various	179		Up to 273

Appendix F. Reasons for Delayed Definitization of MCSC UCAs

Marine Corps Systems Command's Definitization Details for FYs 2004–2009

Change in Contract Specifications				
Contract Number	Delivery Order		Days From Issuance	
M67854-07-D-5028	0004 Mod 1		244	
M67854-05-D-6014	P00014		248	
	Average Days From Issuance to Definitization			246
Inadequate Contractor Proposals/Contractor Issues				
M67854-07-D-5028	0004 Mod 4		196	
	0004 Mod 8		245	
M67854-07-D-5025	0009		421	
	0003 Mod 14		222	
M67854-05-D-6014	0004 & 0005		273	
M67854-07-D-5031	0007		314	
	0006 Mod 3		230	
	0009		736	
	0010		385	
M67854-07-D-5030	0003 Mod 1		801	
	Average Days From Issuance to Definitization			382

Appendix F. Reasons for Delayed Definitization of MCSC UCAs (cont'd)

Marine Corps Systems Command's Definitization Details for FYs 2004–2009

Lack of Personnel				
Contract Number	Delivery Order		Days From Issuance	
M67854-06-D-7004	0004		292	
	0005 Mod 51A		560	
	0008		448	
	0009		383	
	0010		310	
	0011		335	
	0013		244	
M67854-06-D-7003	0001		236	
	0003		1012	
	0005 Mod 01		547	
	0005 Mod 04		347	
	0005 Mod 51A		339	
	0007		650	
	0007 Mod 03		373	
	0007 Mod 04		308	
	0009		539	
	0010		545	
	0012		436	
	0013		670	
	0013 Mod 04		574	
	0013 Mod 08		447	
	0013 Mod 09		351	
	0015 Mod 02		265	
	0016		397	
	0017 Mod 01		210	
	0018 Mod 01		195	
Average Days From Issuance to Definitization				424

Appendix F. Reasons for Delayed Definitization of MCSC UCAs (cont'd)

Marine Corps Systems Command's Definitization Details for FYs 2004–2009

Audit Issues				
Contract Number	Delivery Order		Days From Issuance	
M67854-05-D-5017			899	
M67854-07-D-5030	0005 Mod 1		280	
M67854-07-C-2062			449	
	Average Days From Issuance to Definitization			543
Reason Not Specified				
Contract Number	Delivery Order		Days From Issuance	
M67854-07-D-5028	0005		238	
M67854-07-D-1011			186	
M67854-04-D-5016	0005		273	
	0014		278	
M67854-07-D-5031	0010		385	
M67854-07-D-5032	0002 Mod 19		312	
	0004 Mod 6		270	
	0005 Mod 7		219	
	0006 Mod 6		249	
	0007 Mod 03		249	
	0008 Mod 01		342	
M67854-07-C-1034			230	
	Average Days From Issuance to Definitization			269



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20350-3000

IN REPLY REFER TO:
7500
RFR-80
21 Sep 10

MEMORANDUM FOR DEPARTMENT OF DEFENSE OFFICE OF THE DEPUTY
INSPECTOR GENERAL FOR AUDITING, ACQUISITION
AND CONTRACT MANAGEMENT

Subj: Department of Defense Inspector General Draft Report
D-2009-D000CG-0248.001, "MARINE CORPS SYSTEMS COMMAND'S
USE OF UNDEFINITE CONTRACTUAL ACTIONS," dated
August 13, 2010

Ref: (a) DODIG memo of August 13, 2010

Encl: (1) Marine Corps official comments

1. In accordance with reference (a), the Marine Corps has reviewed the subject draft report and provides comments at the enclosure.

2. For questions regarding this response, you may contact Mr. Charles K. Dove, Headquarters U. S. Marine Corps Senior Audit Liaison Officer, at [REDACTED]
[REDACTED]

C. K. DOVE
By direction of the
Commandant of the Marine Corps



UNITED STATES MARINE CORPS
MARINE CORPS SYSTEMS COMMAND
2200 LESTER ST
QUANTICO, VIRGINIA 22134-6050

IN REPLY REFER TO:

1975
CT02
17 Sep 10

From: Executive Director, Marine Corps Systems Command
To: Office of the Department of Defense Inspector General

Subj: PROJECT NO. D2009-D000CG-0248.001, "MARINE CORPS SYSTEMS
COMMAND'S USE OF UNDEFINITIZED CONTRACTUAL ACTIONS,"
DATED 13 AUGUST 2010

1. The Executive Director, Marine Corps Systems Command (MCSC), provides the following response to subject draft report:

RECOMMENDATION 1. Develop a guide that can be used by contracting personnel before issuing an undefinitized contract action (UCA) that describes the additional justification and approval procedures; funding restrictions; documentation requirements, to include a discussion of how the undefinitized portion of the award affected the overall profit or fee; and definitization time restrictions associated with undefinitized contract actions.

USMC RESPONSE: Concur. MCSC currently has a draft UCA and Letter Contracting Quick Reference Guide (QRG) and a draft UCA Process located on the MCSC Contracts Automated Information System (AIS) Portal. These final documents will incorporate all suggestions from Recommendation 1 to ensure areas noted by this audit report are adequately covered. The Portal will also include samples of appropriate documents to ensure an understanding of what is required for appropriate documentation.

RECOMMENDATION 2. Develop procedures in the contract review process to help ensure that each undefinitized contractual action, including undefined delivery orders, are submitted for approval to the head of the agency or delegate and that each approval includes specific information such as the adverse impact on agency requirements.

USMC RESPONSE: Concur. Procedures already exist in the draft QRG and UCA Process for appropriate approvals of the required determination and findings for UCAs. As noted above, these procedures will be updated to include proposed recommendations. In addition, the Assistant Commander, Contracts, has added an internal review of all contracting documents by Business Operations (BizOpps). This will include UCA documentation and

ENCL (1)

Subj: PROJECT NO. D2009-D000CG-0281.001, "MARINE CORPS SYSTEMS
COMMAND'S USE OF UNDEFINITIZED CONTRACTUAL ACTIONS,"
DATED 13 AUGUST 2010

will ensure UCAs are submitted for approval at the appropriate level and include any required information.

RECOMMENDATION 3. Develop a method to track the elapsed days of Marine Corps Systems Command undefinitized contractual actions from issuance through definitization with other milestones such as receipt of a qualifying proposal. Additionally, implement procedures for documenting and receiving approval when undefinitized contractual actions extend beyond established time limitations or obligation criteria.

USMC RESPONSE: Concur. All undefinitized contractual actions are required to provide a schedule for definitizing the action. This schedule should be modified via contract modification with appropriate approvals if the schedule is delayed. MCSC has developed an automated tracking tool for UCAs on its MCSC Contracts AIS Portal, which is currently being tested. This share-point based log tracks elapsed days of UCAs against milestones to mirror the calculation of elapsed days of the semi-annual UCA report required by DFARS 217.7405 and DFARS PGI 217.7405. The log provides an easy view of actions in jeopardy of extending beyond established time limitations. Anticipate using this log exclusively beginning 1 October 2010.

RECOMMENDATION 4. Require that Marine Corps Systems Command contracting personnel better coordinate with customers to identify changes in Government requirements as soon as practicable and document changes in the acquisition narrative.

USMC RESPONSE: Concur. Contracting personnel are making efforts to communicate UCA awards and definitization schedules; however, this effort should be ongoing to ensure awarded UCAs reflect terms and conditions (and scope) that are as definitive as possible to contribute to a more timely definitization. If changes in requirements do occur, appropriate approvals to modify UCAs in accordance with the Federal Acquisition Regulation (FAR) will be followed. The QRG and UCA process will be updated to reflect the above. In addition, MCSC's Program Management Directorate will review its Acquisition Policies and determine where these policies need to be revised to reflect a more appropriate use of UCAs.

Subj: PROJECT NO. D2009-D000CG-0281.001, "MARINE CORPS SYSTEMS
COMMAND'S USE OF UNDEFINITIZED CONTRACTUAL ACTIONS,"
DATED 13 AUGUST 2010

RECOMMENDATION 5. Develop procedures so that Marine Corps program offices avoid requesting that Marine Corps Systems Command contracting officials issue undefinitized contractual actions if the awards are for known requirements.

USMC RESPONSE: Concur. Contracting personnel need to be more consistent in not awarding contracts due to lack of proper planning and continually communicate this to our customers. In addition, MCSC's Program Management Directorate will review its Acquisition Policies and determine where these policies need to be revised to reflect a more appropriate use of UCAs.

RECOMMENDATION 6. Require contracting officials to fund all undefinitized contractual actions at an amount consistent with costs during the scheduled undefinitized period so that both users and contractors have incentive to coordinate early and often about proposals, contractual needs, and funding.

USMC RESPONSE: Concur. Contracting officials need to appropriately obligate only the amount allowable in accordance with the FAR. Procedures are available in the draft QRG and UCA Process located on the MCSC Contracts AIS Portal. These procedures will be updated to include that Contracting Officers should consider only obligating funds at an amount consistent with costs anticipated during the scheduled undefinitized period.

RECOMMENDATION 7. Develop metrics for measuring contractor responsiveness in preparing qualifying proposals and whether delayed contractor responsiveness in preparing qualifying proposals should affect profit.

USMC RESPONSE: Concur. As noted earlier, MCSC has developed an electronic log for UCAs. This log provides a management view that depicts when a UCA has not received a qualified proposal timely. Our draft QRG and UCA Process will also be updated to include when it is appropriate to consider a lower profit in response to delayed contractor submission of a qualifying proposal.

Subj: PROJECT NO. D2009-D000CG-0281.001, "MARINE CORPS SYSTEMS
COMMAND'S USE OF UNDEFINITIZED CONTRACTUAL ACTIONS,"
DATED 13 AUGUST 2010

2. The MCSC will complete action items addressed in this
response no later than 30 November 2010.

Michael J. Burrow

Chief of Staff
MCSC

For JOHN D. BURROW



Inspector General Department of Defense